

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 -vs-

20 CR 386 (NSR) (JMC)

CHANGE OF PLEA

6 NICOLAUS WYNBERG,

7 Defendants.
8 -----x

9 United States Courthouse
10 White Plains, New York

11 Wednesday, September 29, 2021
12 12:00 p.m.

13 B e f o r e:

14 HONORABLE JUDITH MCCARTHY,
15 Magistrate Judge

16 A P P E A R A N C E S:

17 AUDREY STRAUSS

18 United States Attorney for the
19 Southern District of New York

JOSIAH PERTZ,

Assistant United States Attorney

21 STEPHENS, BARONI, REILLY & LEWIS
22 STEPHEN LEWIS, ESQ.

Attorney for Defendant

1 THE DEPUTY CLERK: All rise. This is the matter of
2 the United States of America versus Nicolaus Wynberg.

3 Counsel please state your appearances for the record.

4 MR. PERTZ: Josiah Pertz for the United States. Good
5 afternoon, your Honor.

6 THE COURT: Good afternoon, Mr. Pertz.

7 MR. LEWIS: Judge, good afternoon. Stephen Lewis,
8 Stephens, Baroni, Reilly & Lewis, White Plains, New York,
9 appearing today before you with Nicolaus Wynberg.

10 THE COURT: Good afternoon, Mr. Lewis, and good
11 afternoon, Mr. Wynberg.

12 THE DEFENDANT: Good afternoon, your Honor.

13 THE COURT: Okay, you can be seated.

14 Mr. Pertz, what are we here for today?

15 MR. PERTZ: Your Honor, this is a change-of-plea
16 hearing.

17 THE COURT: Thank you.

18 It's my understanding that Mr. Wynberg was arraigned
19 before Judge Roman on December 1st, 2020, but I don't see any
20 record of a Rule 5(f) order being issued. Has that happened in
21 this case?

22 MR. PERTZ: I would gladly take it at this point just
23 to make sure.

24 THE COURT: Okay. Mr. Lewis, do you know if one was
25 done?

1 MR. LEWIS: Doubtful.

2 THE COURT: Okay.

3 So, Mr. Pertz, I'm going to direct the Prosecution to
4 comply with its obligations under *Brady v. Maryland* and its
5 progeny to disclose to the Defense all information, whether
6 admissible or not, that is favorable to the Defendant, material
7 either to guilt or to punishment, and known to the Prosecution.
8 Possible consequences for non-compliance may include dismissal
9 of individual charges or the entire case, exclusion of evidence,
10 and professional discipline or court sanctions on the attorneys
11 responsible. I'll be entering a written order more fully
12 describing this obligation and the possible consequences of
13 failing to meet it, and I direct the Prosecution to review and
14 comply with that order.

15 Does the Prosecution confirm that it understands its
16 obligations and will fulfill them?

17 MR. PERTZ: The Government confirms its obligations.

18 THE COURT: Thank you, Mr. Pertz.

19 Okay, Mr. Wynberg, I want to advise you that this is
20 not a trial. I'm going to allow you to remain seated for most
21 of the proceeding until you get to the point where you allocute.
22 Counsel will still rise when addressing the Court, but I will be
23 asking a lot of questions, so it's sometimes easier for the
24 court reporter to hear you if you're seated.

25 I'm going to ask you a lot of questions. I'm going to

1 ask you to speak clearly and loudly. It's harder because we're
2 all in masks to be heard, so speak as loudly as you can, without
3 yelling, of course, and make sure you keep your mask --
4 everybody keeps your masks over your nose and mouth, okay?

5 So it's my understanding, Mr. Wynberg, that you've
6 decided to enter a guilty plea.

7 THE DEFENDANT: That is correct, your Honor.

8 THE COURT: This proceeding is for the purpose of
9 ensuring that you are aware of your rights in connection with
10 your plea and that any waiver of those rights is knowing and
11 voluntary prior to entering your plea.

12 If at any time you do not hear or understand what I
13 say to you, please interrupt me so I can repeat and explain what
14 I've said. If you want to confer with your attorney regarding
15 anything I say, please interrupt me so you can do that.

16 Do you understand?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: I want to advise you that you have the
19 right to be represented by counsel throughout the entire case,
20 and you may consult with your attorney at any stage of this
21 proceeding. You also have the right to remain silent. Any
22 statement that you do make may be used against you. You have
23 this right to remain silent even if you've already made
24 statements to law enforcement officers.

25 Do you understand?

1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Ms. Hummel, could you please place Mr.
3 Wynberg under oath or affirmation.

4 NICOLAUS WYNBERG, Sworn.

5 THE COURT: It's important for you to understand that
6 if you knowingly make a false statement during these
7 proceedings, you could be subject to prosecution for the crime
8 of perjury or for making a false statement to the Court, and you
9 could face a punishment of up to five years imprisonment and a
10 \$250,000 fine for committing such a crime. Such punishment
11 would be separate and apart from any crime you may be facing on
12 the crime charged in the felony indictment.

13 Do you understand that?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: What is your full name?

16 THE DEFENDANT: Nicolaus George Wynberg.

17 THE COURT: How old are you?

18 THE DEFENDANT: I'm forty-five.

19 THE COURT: Are you a United States citizen?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Bachelor's of science.

23 THE COURT: Are you currently or have you been
24 recently under the care of a doctor or a psychiatrist for any
25 reason?

1 THE DEFENDANT: I'm currently under the care of the
2 psychiatrist at the Westchester County Jail.

3 THE COURT: And have you taken any mind-altering
4 drugs, medicines, or pills or consumed any alcohol in the last
5 twenty-four hours?

6 THE DEFENDANT: Only what's prescribed to me by the
7 facility.

8 THE COURT: And what type of medication is being
9 prescribed for you?

10 THE DEFENDANT: The doctor has me on three different
11 medications; one for specifically anti-anxiety, another which is
12 for anxiety and depression, and another which is just for
13 depression.

14 THE COURT: And what time of day do you take this
15 medication typically?

16 THE DEFENDANT: Three times a day. I take them
17 morning, afternoon, and evening. They vary up to an hour or two
18 when they actually come.

19 THE COURT: And do they have any effect on your
20 ability to think clearly or understand what's going on?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Okay. Have you ever been hospitalized or
23 treated for alcoholism or drug addiction?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Is your mind clear today?

1 THE DEFENDANT: It is, your Honor.

2 THE COURT: Do you understand what's happening at this
3 proceeding?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Does either Counsel have any objections to
6 the Defendant's competence to proceed at this time?

7 MR. PERTZ: No, your Honor.

8 MR. LEWIS: No, your Honor.

9 THE COURT: So, Mr. Wynberg, this proceeding is called
10 a plea allocution. I want you to understand that you have an
11 absolute right to have this plea allocution conducted before a
12 United States District Judge. It is the District Judge who will
13 impose the sentence in this case.

14 If you consent, then I will conduct the plea
15 allocution, and I will then make a report to the District Judge
16 in which I will recommend whether or not the District Judge
17 should accept the plea of guilty. I will make that
18 recommendation based on the information that is brought out
19 during today's proceedings.

20 It is important for you to understand that the Court
21 will not accept your plea unless the Court is satisfied that you
22 fully understand all of your rights and that you are, in fact,
23 guilty.

24 Do you understand that?

25 THE DEFENDANT: I do, your Honor.

1 THE COURT: Do you understand you have an absolute
2 right to have this plea allocution conducted before a United
3 States District Judge?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Is it your wish that I conduct the plea
6 allocution?

7 THE DEFENDANT: It is my wish, your Honor.

8 THE COURT: And, Mr. Lewis, did your client sign a
9 Consent to Proceed Before a United States Magistrate Judge on a
10 Felony Plea Allocution?

11 MR. LEWIS: Yes, Judge.

12 THE COURT: And, Ms. Hummel, could you please have the
13 Defendant identify his signature on the bottom of the form.

14 THE DEPUTY CLERK: Mr. Wynberg, I have before me the
15 Consent to Proceed Before a United States Magistrate Judge on a
16 Felony Plea Allocution form, which you've signed and dated today
17 September 29th, 2021.

18 Is this your signature on the bottom of the form
19 (showing)?

20 THE DEFENDANT: Yes, ma'am.

21 THE DEPUTY CLERK: And before signing this form, did
22 you have a chance to read it and review it with your attorney?

23 THE DEFENDANT: I did.

24 THE DEPUTY CLERK: Thank you.

25 THE COURT: Thank you, Ms. Hummel.

1 THE DEPUTY CLERK: You're welcome.

2 THE COURT: So I have before me the Consent to Proceed
3 Before a United States Magistrate Judge on a Felony Plea
4 Allocution, which you have signed, Mr. Wynberg.

5 What that form says is that, knowing you have the
6 right to have a plea taken by a United States District Judge,
7 you are agreeing to have the plea taken by me, a United States
8 Magistrate Judge. Is that correct?

9 THE DEFENDANT: That is correct, your Honor.

10 THE COURT: Before you signed the form, did your
11 lawyer explain it to you?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Did anyone threaten or force you or
14 promise you anything in order to get you to sign the consent
15 form?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Did you sign the form freely and
18 voluntarily?

19 THE DEFENDANT: I did, your Honor.

20 THE COURT: Counsel, do you know of any reason why the
21 waiver and consent to proceed with this plea allocution before a
22 United States Magistrate Judge should not be accepted?

23 MR. PERTZ: No, your Honor.

24 MR. LEWIS: No, your Honor.

25 THE COURT: I find the Defendant, Nicolaus Wynberg, is

1 fully competent and understands the proceedings before him. I
2 also find he is capable of waiving his right to appear before a
3 United States District Judge in order to enter his guilty plea,
4 and I, therefore, accept the consent form, which has been signed
5 and is now part of the court record. The consent form is marked
6 as Court Exhibit 1 and will remain in the court file.

7 So, Mr. Wynberg, I've been informed that you wish to
8 change your plea and enter a plea of guilty as to certain
9 charges. Is that correct?

10 THE DEFENDANT: That is correct, your Honor.

11 THE COURT: Before deciding whether to accept your
12 plea, I'm going to ask you certain questions. It's very
13 important that you answer these questions honestly and
14 completely. The purpose of these proceedings is to make sure
15 that you understand your rights, to decide whether you're
16 pleading guilty of your own free will, and make sure that you
17 are pleading guilty because you are guilty and not for some
18 other reason.

19 Do you understand what I'm saying?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: If you don't understand any of the
22 questions or you want any time to consult with your lawyer,
23 please say so, because it is important that you understand every
24 question before you answer it.

25 So I have before me a copy of the indictment

1 containing the charges against you. This is a three-count
2 indictment.

3 Count I charges you with unlawful manufacture of a
4 destructive device in violation of Title 28 U.S.C. §§ 5822,
5 5861(f), and 5871, and Title 18 U.S.C. § 2; Count II charges you
6 with unlawful possession of a destructive device in violation of
7 Title 26 U.S.C. §§ 5861(d) and 5871; and Count III charges you
8 with being a felon in possession of ammunition in violation of
9 Title 18 U.S.C. §§ 922(g)(1) and (2).

10 Have you received a copy of this indictment, Mr.
11 Wynberg?

12 THE DEFENDANT: I have, your Honor.

13 THE COURT: Have you read it?

14 THE DEFENDANT: I have, your Honor.

15 THE COURT: Do you understand what it says?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: Do you want me to read it to you in open
18 court?

19 THE DEFENDANT: Um, no, thank you, your Honor.

20 THE COURT: Have you had time to talk to your attorney
21 about these charges and about how you wish to plead?

22 THE DEFENDANT: Yes, I have, your Honor.

23 THE COURT: And have you discussed with your attorney
24 the charges against you, including the charges you intend to
25 plead guilty to, as well as any other charges that the

1 Government may have made in this case?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has your attorney told you the
4 consequences of pleading guilty?

5 THE DEFENDANT: He has, your Honor.

6 THE COURT: Are you satisfied with your attorneys's
7 representation of you?

8 THE DEFENDANT: I am satisfied.

9 THE COURT: Have you told your attorney everything you
10 know about this case?

11 THE DEFENDANT: I have, your Honor.

12 THE COURT: So I believe Ms. Hummel might have a copy
13 of the original plea agreement. The original plea agreement is
14 going to be marked as a Government exhibit and will remain in
15 the custody of the Government's attorney.

16 I'm going to ask Ms. Hummel to have the Defendant
17 identify his signature on the last page of the agreement.

18 THE DEPUTY CLERK: Mr. Wynberg, I have before me the
19 plea agreement, which is dated September 17th, 2021, and which
20 you've signed today, September 29th, 2021, on the bottom of page
21 6.

22 Is that your signature (showing)?

23 THE DEFENDANT: Yes, ma'am.

24 THE DEPUTY CLERK: And before signing this agreement,
25 did you have a chance to read it and review it with your

1 attorney?

2 THE DEFENDANT: I did, ma'am.

3 THE DEPUTY CLERK: Thank you.

4 THE COURT: Thank you.

5 So, Mr. Lewis, did you review each and every part of
6 this plea agreement with your client?

7 MR. LEWIS: Yes, Judge.

8 THE COURT: And, Mr. Wynberg, are you satisfied that
9 you understand the entire plea agreement which your lawyer has
10 reviewed with you?

11 THE DEFENDANT: Yes, your Honor, I'm satisfied.

12 THE COURT: Do you have any questions either for your
13 lawyer or for me about what this plea agreement says?

14 THE DEFENDANT: Not at this time, your Honor.

15 THE COURT: Do you understand that anything which is
16 not set forth in the plea agreement or which is not told to me
17 at this time on the record will not be binding on the outcome of
18 your case?

19 THE DEFENDANT: Uh, could you please repeat that?

20 THE COURT: Yep. Do you understand that anything
21 which is not set forth in the plea agreement or which is not
22 told to me at this time on the record is not going to be binding
23 on the outcome of your case.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Thank you.

1 And, Mr. Pertz, is there anything beyond the written
2 plea agreement the Court should know about?

3 MR. PERTZ: There is not.

4 THE COURT: And, Mr. Lewis, is there any other written
5 agreement the Court should know about?

6 MR. LEWIS: No, Judge.

7 THE COURT: Mr. Wynberg, did you sign the plea
8 agreement freely and voluntarily?

9 THE DEFENDANT: I did, your Honor.

10 THE COURT: Did anyone force you or coerce you or
11 threaten you or promise you anything other than what is set
12 forth in the written plea agreement in order to get you to sign
13 the plea agreement?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: So this plea agreement says you're going
16 to plead guilty to Count II of the superseding indictment.
17 Count II charges you with unlawful possession of a destructive
18 device in violation of Title 26 U.S.C. §§ 5861(d) and 5871.

19 Do you understand that?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: If you're convicted of the charges
22 contained in Count II of this Superseding Indictment, either
23 after trial or by plea of guilty, you would be subject to a
24 maximum term of imprisonment of ten years, a maximum term of
25 supervised release of three years, a maximum fine of \$10,000,

1 and \$100 mandatory special assessment.

2 Do you understand that?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: If you are sentenced to a term of
5 imprisonment, even if you're sentenced to the maximum term of
6 imprisonment, and if you are also sentenced to a term of
7 supervised release and if you then violate the conditions of
8 your supervised release, you could be sentenced to an additional
9 term of imprisonment for violating the conditions of your
10 supervised release, which in this case would be an additional
11 term of up to two years.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: In addition, if you violate the conditions
15 of your supervised release, you would not receive credit for any
16 time already served in prison or for time served on supervised
17 release. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You're also subject to an order of
20 forfeiture in this case, and under this plea agreement, you are
21 admitting the forfeiture allegation with respect to Count II of
22 the indictment and agreeing to forfeit to the United States
23 pursuant to Title 26 U.S.C. § 5872 and Title 28 U.S.C.
24 § 2461 all rights, title, and interest that you have in the
25 specific property listed in Exhibit A attached to the plea

1 agreement.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You will also agree not to file a claim or
5 petition for omission or mitigation in any forfeiture proceeding
6 involving this specific property and will not cause or assist
7 anyone else in doing so. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You also agree to take all necessary steps
10 to pass clear title to the specific property to the United
11 States. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is there any restitution in this case, Mr.
14 Pertz?

15 MR. PERTZ: There is not.

16 THE COURT: Thank you.

17 Do you understand, Mr. Wynberg, that these are the
18 possible sentences that could be imposed following a plea of
19 guilty in this matter?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you also understand that you are
22 pleading guilty to a felony offense and that such an
23 adjudication may deprive you of certain valuable civil rights
24 which may include the right to vote, the right to hold public
25 office, the right to serve on a jury, the right to possess any

1 type of firearm, including rifles and shotguns, the right to be
2 considered for certain types of employment or to be bonded, to
3 serve in the United States Military, and the right to possess or
4 obtain government-issued licenses, including licenses that may
5 be required in certain professions and occupations.

6 Do you understand that?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: And I believe you said you were a U.S.
9 citizen. Is that correct?

10 THE DEFENDANT: That's correct, your Honor.

11 THE COURT: Thank you.

12 Do you understand that these are the possible legal
13 consequences of a guilty plea in this case?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Do you understand that the United States
16 Sentencing Commission has issued guidelines for judges to follow
17 in determining the appropriate sentence in a criminal case?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you also understand that these
20 guidelines are not mandatory, but they must be considered by the
21 Court, along with other factors listed in 18 U.S.C. § 3553, when
22 the judge determines the appropriate sentence to impose,
23 including possible departures from the guidelines?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you and your attorney talked about

1 how the sentencing guidelines will be calculated in your case?

2 THE DEFENDANT: We have, your Honor.

3 THE COURT: So the plea agreement in this case sets
4 forth a stipulated sentencing range of 41 to 51 months
5 imprisonment and the stipulated fine range of \$15,000 to
6 \$150,000. However, a low-end limit may apply in this case, and
7 so in this case, the maximum fine specified by the statute is
8 \$10,000 and the statute is 26 U.S.C. § 5871.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that this is simply an
12 understanding between you and your lawyer and the lawyer for the
13 Government and that it is not binding on the District Judge when
14 he imposes sentence?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: Do you understand that the District Judge
17 will consider the guidelines, but will impose a sentence in
18 accordance with the statute, which in this case means that the
19 prison term will not be for more than ten years.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that the Court will not
23 be able to determine the appropriate sentence until after the
24 pre-sentence report has been prepared and until you and your
25 attorney, as well as the Government, have had an opportunity to

1 challenge the facts reported in the pre-sentence report, as well
2 as the calculation of the sentencing guideline range and any
3 sentence recommendation in that report?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that if there are any
6 objections to the pre-sentence report that those objections will
7 be ruled on by the Court and, if necessary, a hearing will be
8 held to determine what information is relevant to the Court's
9 determination of the sentence?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I also want to go over what rights you're
12 giving up under your right to appeal.

13 Under this plea agreement, you're agreeing that you
14 will not file a direct appeal, nor bring a collateral challenge,
15 including, but not limited to, an application under Title 28
16 U.S.C. § 2255 and/or § 2241 of any sentence within or below the
17 stipulated guideline range of 41 to 51 months imprisonment and
18 the Government will not appeal any sentence within or above the
19 stipulated guideline range.

20 Do you understand that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: You're also agreeing not to appeal or
23 bring a collateral challenge of any term of supervised release
24 that is less than or equal to the statutory maximum.

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: You're also agreeing not to appeal or
3 bring a collateral challenge of any fine that is less than or
4 equal to \$10,000, and the Government agrees not to appeal any
5 fine that is greater than or equal to \$10,000.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: You're also agreeing not to appeal or
9 bring any collateral challenge to the forfeiture of the specific
10 property specified in Exhibit A to the plea agreement.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You're also agreeing not to appeal or
14 bring any collateral challenge of any special assessment that is
15 less than or equal to \$100. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Under this plea agreement, Mr. Wynberg,
18 you're agreeing to waive any and all rights to withdraw your
19 plea or attack your conviction, either on direct appeal or
20 collaterally, on the grounds that the Government has failed to
21 produce any discovery material, Jencks Act material, exculpatory
22 material pursuant to *Brady v. Maryland* other than information
23 establishing your factual innocence, or impeachment material
24 pursuant to *Giglio v. United States* that has not already been
25 produced as of the date of the signing of the plea agreement.

1 Do you understand that?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Do you also understand that if you
4 disagree with the Court's sentencing decision, that will not
5 give you a basis for withdrawing your plea of guilty?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you also understand that parole has
8 been abolished, and if you are sentenced to a term of
9 imprisonment, you will not be eligible for early release on
10 parole?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that you do not have to
13 plead guilty and you have the absolute right to plead not guilty
14 and have the matter go to trial by judge or by jury?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that if you choose to
17 plead guilty, you have a right to have a speedy and public trial
18 of your case?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that at any trial of
21 this matter, you would be entitled to the presumption of
22 innocence and that the presumption would remain with you until
23 the Government proves each and every element of the crime
24 charged beyond a reasonable doubt to the satisfaction of a judge
25 if it's a judge trial or to the unanimous satisfaction of a jury

1 if it's a jury trial?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: At such trial, you would have the right,
4 with the assistance your attorney, to confront and cross-examine
5 the witnesses against you. You would have the right to call
6 witnesses to testify for you and to have subpoenas issued to
7 compel witnesses to give testimony. You would also have the
8 right to testify at your trial, but you could not be forced to
9 testify. If you decide not to testify, your decision to remain
10 silent could not be held against you in any way.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: At your trial, you'd also have the right,
14 which I've already mentioned, to the assistance of an attorney
15 and to have an attorney appointed to represent you if you could
16 not afford counsel. Do you understand that?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: Do you understand that if you plead guilty
19 to the charges in Count II of this Felony Superseding
20 Information that you would give up your right to a trial, and
21 except for right to counsel, you would give up all the other
22 rights which I have explained to you here?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Is there anything else in the plea
25 agreement that you would like me to go over with Mr. Wynberg,

1 Counsel?

2 MR. PERTZ: No, your Honor.

3 MR. LEWIS: Not from me, Judge.

4 THE COURT: Thank you, Counsel.

5 So, Mr. Wynberg, have you clearly heard and understood
6 everything I've said to you?

7 THE DEFENDANT: I have, your Honor.

8 THE COURT: Do you have any questions for me or for
9 your attorney about anything I've said or about anything I've
10 asked you?

11 THE DEFENDANT: I do not, your Honor.

12 THE COURT: Thank you.

13 Okay, Mr. Pertz...what are the elements of the
14 offense, and what is the Government prepared to prove at trial
15 in order to establish those elements?

16 MR. PERTZ: In order to prove the Defendant guilty of
17 Count II of the indictment, the Government would have to prove
18 the following beyond a reasonable doubt:

19 One, that the Defendant knowingly possessed a firearm
20 as defined in the National Firearms Act, which definition
21 includes a destructive device and, in turn, in relevant part,
22 the term 'destructive device' means any explosive or incendiary
23 bomb or similar device;

24 Two, that the Defendant knew of the characteristics of
25 the firearm, that is, that it was a destructive device;

1 Three, that the firearm was in operating condition;
2 And, four, that the firearm was not registered to the
3 Defendant in the National Firearms Registration & Transfer
4 Record.

5 The Government expects that the evidence at trial
6 would show the following, in substance and in part:

7 In July of 2020, officers of the law interviewed
8 several witnesses who reported, in part and substance, that
9 Nicolaus Wynberg, the Defendant, had set off at least one small
10 explosion near his trailer in Stanfordville, New York. The
11 witnesses stated that Wynberg had bragged about making explosive
12 devices and had other destructive devices in his possession.

13 On or about July 16th, 2020, law enforcement officers
14 conducted a search of the trailer. They found two devices which
15 appeared to them to be pipe bombs. These devices were sent to
16 the FBI laboratory in Quantico, Virginia, where they were
17 examined by an explosive expert and a chemist. The explosive
18 expert determined that the devices were capable of exploding.
19 An ATF agent searched the National Firearms Registration &
20 Transfer Record and found that neither of these devices was
21 registered to Mr. Wynberg.

22 If the matter had gone to trial, the Government would
23 introduce, among other things, the following evidence to prove
24 the Defendant guilty beyond a reasonable doubt:

25 The Defendant's statements to law enforcement,

1 physical evidence, including the seized devices, testimony of
2 law enforcement witnesses who observed and arrested the
3 Defendant and seized the devices from his trailer, testimony of
4 analysts who examined the seized destructive devices and
5 determined them to be destructive devices as defined under the
6 National Firearms Act and further determined that the devices
7 were operable, and records of a search in the National Firearms
8 Registration & Transfer Record showing that neither the seized
9 devices nor the Defendant were registered therein.

10 Finally, the Government is prepared to prove by a
11 preponderance of the evidence that venue is proper in the
12 Southern District of New York. The Government would show
13 through law enforcement testimony and the Defendant's statements
14 that the Defendant possessed the devices in Stanfordville in the
15 Southern District of New York.

16 THE COURT: In what county is Stanfordville?

17 MR. PERTZ: That is in Dutchess County.

18 THE COURT: Thank you.

19 Okay, Mr. Wynberg, if you would please stand.

20 (Defendant complies)

21 THE COURT: Did you hear what AUSA Pertz said?

22 THE DEFENDANT: I did, your Honor.

23 THE COURT: At this time, how do you wish to plead to
24 the charges in Count II of the superseding indictment?

25 THE DEFENDANT: I wish to plead guilty.

1 THE COURT: Has anyone threatened you or coerced you
2 or pressured you improperly in order to get you to plead guilty
3 to this charge?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Has anyone made any promises to you other
6 than what is set forth in the written plea agreement in order to
7 induce you to plead guilty?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Has anyone made any specific promises to
10 you about what the sentence of the Court will be?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Can you tell me in your own words what you
13 did to commit this crime.

14 THE DEFENDANT: Yes, your Honor.

15 In the summer of 2020, specifically July, I was in
16 possession of metal pipe with end caps that I had filled with
17 explosive powder. I understand this to be a destructive device.
18 This was possessed by me at the trailer I was living in located
19 in Dutchess County, New York, which I understand to be in the
20 Southern District of New York. This destructive device was not
21 registered to me, and I understand I had no right to possess it
22 and my possession was a federal offense.

23 THE COURT: Did you commit these acts knowingly and
24 willfully?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Did you know it was against the law to do
2 what you were doing?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Is there anything else which either
5 Counsel believes the Court needs to elicit from the Defendant
6 before making the recommendation contemplated by Rule 11 of the
7 Federal Rules of Criminal Procedure?

8 MR. PERTZ: No, your Honor.

9 THE COURT: One question I do want to ask, Mr.
10 Wynberg, before I proceed.

11 So you said you had filled the metal pipes with
12 explosive powder. Did you know that this pipe was operable and
13 able to be exploded?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Okay.

16 And, Mr. Lewis, is there anything else which you
17 believe that the Court needs to elicit from your client before
18 making a recommendation contemplated by Rule 11 of the Federal
19 Rules of Criminal Procedure?

20 MR. LEWIS: No, your Honor.

21 THE COURT: Mr. Lewis, do you know of any reason why
22 the Court should not recommend acceptance of your client's plea
23 of guilty in this matter?

24 MR. LEWIS: I don't.

25 THE COURT: Mr. Pertz, do you have any reason why the

1 Court should not recommend acceptance of the plea?

2 MR. PERTZ: No, your Honor.

3 THE COURT: Mr. Wynberg, in light of everything that
4 has been said here today, is it still your wish to plead guilty
5 to the charges contained in Count II of the Felony Superseding
6 Indictment?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: On the basis of the allocution and the
9 responses to my questions, I find that the Defendant is fully
10 competent and capable of entering an informed plea.

11 I am satisfied, Mr. Wynberg, that you understand your
12 rights, including the right to go to trial, and that you're
13 aware of the consequences of your plea, including the sentence
14 that may be imposed. Based on this plea allocution, I find the
15 plea is knowing and voluntary and supported by an independent
16 factual basis for each and every element of the crime charged in
17 Count II of the Felony Superseding Indictment.

18 Accordingly, I would respectfully report and recommend
19 to Judge Romàn that the plea be accepted and the Defendant be
20 adjudged guilty of the offense charged in Count II of the Felony
21 Superseding Indictment.

22 I'm going to direct that a pre-sentence investigation
23 be conducted by the United States Department of Probation and a
24 pre-sentence report will be prepared, so within fourteen days of
25 today, Mr. Wynberg, you need to meet with the Department of

1 Probation, Counsel will help you arrange that, and you'll be
2 interviewed by a representative from the Department of
3 Probation. I want to make sure that you understand you need to
4 be fully honest and truthful during that interview, because if
5 it comes to the Court's attention that you provided false,
6 incomplete, or misleading information, that may be held against
7 you at the time of sentencing.

8 Do you understand that?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: And, Mr. Pertz, the prosecution case
11 summary for purposes of the presentence report is to be
12 delivered to the Probation Department no later than 14 days from
13 today, okay?

14 Mr. Wynberg, you may be seated.

15 (Defendant complies)

16 THE COURT: I'm going to further direct that the court
17 reporter provide a transcript of these proceedings within 30
18 days setting forth my report and recommendation to Judge Romàn.
19 The transcript is to come to me first for review.

20 Judge Romàn has scheduled sentencing in this matter
21 for January 5th, 2022, at 11:45 a.m. or January 5th, 2022, at
22 two p.m. Please contact Judge Romàn's chambers to confirm the
23 date and time of sentencing.

24 Is there anything further we need to do today?

25 MR. LEWIS: Judge, could I have those two prospective

1 sentencing dates and times again, please?

2 THE COURT: Yep. January 5th, 2022, at 11:45 a.m. or
3 January 5th, same date, 2022, at two p.m.

4 MR. LEWIS: Same date.

5 THE COURT: So same date, just one's at 11:45, one's
6 at two p.m.

7 MR. LEWIS: Got it.

8 THE COURT: Okay.

9 Anything further?

10 MR. PERTZ: Nothing further from the Government.

11 Thank you.

12 THE COURT: Okay, thank you all very much and have a
13 good day and stay well. Good luck to you, Mr. Wynberg.

14 THE DEFENDANT: Thank you for your time, your Honor.

15 THE COURT: Thank you.

16 Certified to be a true and accurate transcript.

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19 TABITHA DENTE, SR. COURT REPORTER

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